

**DEPARTMENT OF STATE REVENUE**

**FIRST SUPPLEMENTAL LETTER OF FINDINGS NUMBER 98-0002 ST  
Sales And Use Tax  
For Tax Periods: 1994 Through 1996**

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**ISSUES**

**1. Sales and Use Tax: Labels**

**Authority:** IC 6-2.5-3-2 (a). IC 6-2.5-5-6, 45 IAC 2.2-5-5-6, Miles, Inc. v. Indiana Department of Revenue, 659 NE2d 1158 (Ind. Tax Ct. 1995), Indiana Bell Telephone Co., v. Indiana Department of Revenue, 627 NE 2d 1386 (Ind. Tax Ct. (1994).

Taxpayer protests the assessment of use tax on certain labels.

**STATEMENT OF FACTS**

Taxpayer is a meat packer. Taxpayer purchases live animals and processes them into finished goods or items requiring further processing by the purchaser. After an audit, additional sales/use taxes were assessed for the tax periods 1994-1996. Taxpayer timely protested the audit and a hearing was held. The Indiana Department of Revenue issued a Letter of Findings. Taxpayer timely requested a rehearing on one issue. More facts will be provided as necessary.

**DISCUSSION**

**1. Sales and Use Tax: Labels**

Pursuant to IC 6-2.5-3-2 (a), Indiana imposes an excise tax on tangible personal property stored, used or consumed in Indiana. There are several

statutory exemptions from the use tax. It is established law that all tax exemptions must be strictly construed against Taxpayers. Indiana Bell Telephone Co. v. Indiana Department of Revenue, 627 N.E. 2d 1386, Ind. Tax Court (1994). Therefore Taxpayer bears the burden of showing that the subject labels meet all the tests for qualification for exemption.

Taxpayer protests the assessment of additional use tax on certain adhesive labels. These labels indicate the Taxpayer's name, the product such as "Fresh Pork Hams" or "Pork Loins", the weight of the product, lot numbers and the date of packing. Pursuant to U.S.D.A. regulations, these products cannot leave Taxpayer's facility, be transported or accepted by retailers without the label. Taxpayer affixes these labels to the non-returnable boxes containing several of the items such as individually packaged hams to be purchased by the ultimate consumer. Without these labels attached to the containers, the included products are not marketable.

Taxpayer contends that these labels qualify for exemption pursuant to IC 6-2.5-5-6 as material that is incorporated into tangible personal property produced for resale. 45 IAC 2.2-5-14 gives three tests which items must meet to qualify for this exemption. The first test requires "that the material must be physically incorporated into and become a component of the finished product." In this case, the final product is the item such as a ham or package of bacon that the ultimate consumer buys. Taxpayer does not attach the labels directly to or physically incorporate them into the finished product, the individual package of ham or bacon to be sold to the ultimate consumer in the grocery store. Rather Taxpayer attaches the labels directly to and physically incorporates them into the box containing several of the finished products. Therefore the use of these labels does not meet the first test for qualification for exemption from the use tax.

Taxpayer cites Miles, Inc. v. Indiana Department of Revenue, 659 NE2d 1158 (Ind. Tax Ct.1995) as support for its contention that the labels should qualify for the incorporation exemption pursuant to IC 6-2.5-5-6. In that case, the Court considered whether discount coupons that were put into the individual boxes of Alka Seltzer qualified for the incorporation exemption. The discount coupons met the first test for the exemption because they were combined with the individual bottles of Alka Seltzer offered for sale to consumers. In Taxpayer's situation, the labels are not incorporated into the products for the ultimate consumer. This clearly distinguishes Taxpayer's situation. Therefore the Miles case is not controlling in this situation.

### **FINDING**

Taxpayer's protest is denied.